

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TODD KREISLER

Plaintiff,

-v-

60TH STREET RESTAURANT CORP., d/b/a
PATSY'S PIZZERIA, and PTZ REALTY
L.L.C.,

Defendants.
----- X
----- X

TODD KREISLER

Plaintiff,

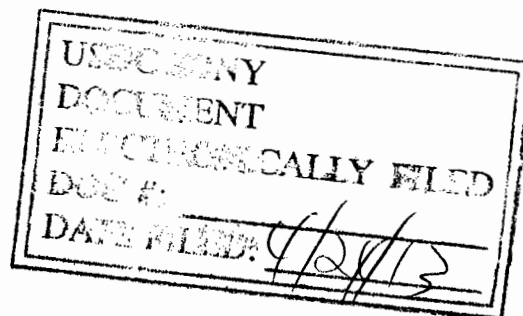
-v-

60TH STREET RESTAURANT CORP., d/b/a
PATSY'S PIZZERIA, and PTZ REALTY
L.L.C.,

Defendants.
----- X

JED S. RAKOFF, U.S.D.J.

09 Civ. 8618 (JSR)



13 Civ. 1647 (JSR)

ORDER

On April 5, 2010, the Court ordered the dismissal of case number 09 Civ. 8618(JSR) with prejudice following a stipulation of voluntary dismissal between the parties pursuant to Fed. R. Civ. P. 41(a)(1). The parties' stipulation represented that "[a] resolution of all matters in dispute has been made pursuant to a certain Confidential Settlement Agreement." See Stipulation of Dismissal with Prejudice, 09 Civ. 8618(JSR), ECF No. 8.

On March 12, 2013, plaintiff filed a new complaint in case number 13 Civ. 1647(JSR), which was then amended on March 14, 2013. Apart from references to the parties' settlement agreement, the complaints filed in case no. 13 Civ. 1647(JSR) are virtually identical to the original complaint filed in case no. 09 Civ. 8618(JSR). At an in-court hearing on April 18, 2013, the Court noted that case number 09 Civ. 8618(JSR) was dismissed with prejudice, and consequently dismissed case number 13 Civ. 1647(JSR) as well. See Tr. of April 18, 2013. When the Court questioned plaintiff's counsel as to why this subsequent action was filed despite the dismissal of the first action with prejudice, plaintiff's counsel represented to the Court that the order dismissing the earlier case provided that the Court would retain jurisdiction to enforce the settlement agreement. Id. The Court advised plaintiff's counsel that his representation that the Court had purportedly retained jurisdiction to enforce the parties' settlement in case number 09 Civ. 8618(JSR) did not avoid the conclusion that new case must be dismissed with prejudice, and noted that his client's remedy was to file a motion to reopen the earlier case.

The Court has since reviewed its April 4, 2010, Order dismissing with prejudice case number 09 Civ. 8618(JSR) and finds no indication whatsoever that the Court retained jurisdiction to

enforce the settlement agreement or that the terms of the confidential settlement agreement were incorporated into the Court's April 5, 2010, Order. On the contrary, the Court's Order contained no such provision retaining jurisdiction and the parties' stipulation provided that "all parties agree not to file any further motions, of any kind, in this matter." Stipulation of Dismissal with Prejudice, 09 Civ. 8618(JSR), ECF No. 8.

Consequently, the Court hereby confirms its ruling from the bench dismissing case number 13 Civ. 1647(JSR) with prejudice and further directs plaintiff's counsel to submit to the Court by April 29, 2013, an affidavit explaining, if he can, his apparent misrepresentation to the Court at the April 18 conference.

SO ORDERED.



JED S. RAKOFF, U.S.D.J.

Dated: New York, New York
April 18, 2013